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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,559	09/18/2006	Peter Simon Smith	018872.00168	3604
26712	7590	02/05/2010	EXAMINER	
HODGSON RUSS LLP THE GUARANTY BUILDING 140 PEARL STREET SUITE 100 BUFFALO, NY 14202-4040			WORRELL JR, LARRY D	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			02/05/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,559

Applicant(s)

SMITH ET AL.

Examiner

Danny Worrell

Art Unit

3765

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-43 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 16-26, 29, 32-38 and 41 is/are rejected.
- 7) ☒ Claim(s) 27, 28, 30, 31, 39, 40, 42 and 43 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date 8/17/09
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Claims 16, 18-20, 32-35 and 37 are rejected under 35 U.S.C. 102(a) as being anticipated by Barthold et al (US 6,032,297).

As shown in figures 1, Barthold et al (US 6,032,297) teaches the invention as claimed including a firefighter's helmet comprising an inner protective shell having an outer layer (14) of impact-resisting plastics and an inner-impact-resisting layer(18), the inner protective shell is *capable* of being worn on its own when the user is attending an incident other than a structural fire given that the outer shell (12) is readily removable via elements (retaining clip members 42), and an outer shell (12) adapted to fit over the inner protective shell and to be retained thereon, the outer shell being more extensive (see figure 1) than the inner protective shell so as to cover substantially the whole inner shell to protect the user against structural firefighting risks, and being configured to be fitted to and removed from the inner protective shell by the user whilst wearing the inner shell (via clips 42). Note elements (34) act as spacer elements.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 21-26, 29, 36, 38, 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barthold et al (US 6,032,297) in view of Rosie (US 6,961,963).

Barthold et al (US 6,032,297) teaches the invention substantially as claimed as indicated above except for the specific two position retaining means as claimed. Rosie teaches a two layer

helmet which includes a two position retainer means (biased tab system 70'). It would have been obvious at the time the invention was made to substitute a two positioned biased tab system for the retaining clip system for the individual helmet layers of Barthold et al (US 6,032,297) since such a two position is a well know retaining system as shown by Rosie and since it would allow for positive engagement and disengagement of the elements absent any unexpected results.

Allowable Subject Matter

Claims 27, 28, 30, 31, 39, 40, 42 and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danny Worrell whose telephone number is 571/272-4997. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GARY WELCH can be reached on 571/272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Danny Worrell/
Primary Examiner, Art Unit 3765

ldw